the legislation then in force, and it is not correct to take into account subsequent legislation. The learned district judge ought not to have been influenced, as he appears to have been influenced, by the subsequent legislation enhancing the punishment for the offence.

I now turn to the last question whether I ought to disturb the sentence passed on the accused. The minimum term required to be imposed by statute at the time was a term of imprisonment of three years and three strokes of cane. I am in entire agreement with the learned district judge that this would not be an appropriate case for imposing only the minimum term of three years. The amount of cannabis that was transported by the accused was 2.6kg, which was a large amount. In addition, while he was on bail pending his trial on this charge he committed two other offences, namely, trafficking in drugs and possession of drugs. These are the two offences in respect of which charges were brought against him to which he pleaded guilty, and he was convicted and sentenced. These, of course, are not his previous convictions, but nonetheless they show the attitude of mind and the conduct of the accused; he was not as remorseful as he claimed to be. In the circumstances, the term of imprisonment of five years imposed by the learned district judge, though on the high side, cannot in the circumstances be considered as manifestly excessive as to warrant an intervention by an appellate tribunal. Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Sant Singh & Partners; Khattar Wong & Partners.*

Reported by *Mathavan Devadas*

Woh Hup (Pte) Ltd v Property Development Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1145 OF 1989
CHAN SEK KEONG J
8 MARCH 1991

Arbitration — Award — Enforcement — Whether court had jurisdiction to hear the action even though defendants not present or represented — Whether Singapore law or Sri Lankan law or some other law was the proper law of the contract, arbitration agreement, curial law, law of reference — Whether there were disputes referable to arbitration — Arbitration Act (Cap 10, 1985 Ed), s 20

In 1982, the defendants as employers accepted the plaintiffs' tender for the construction of a building in Colombo, Sri Lanka. The form of the contract eventually adopted by the parties was the standard JCT form; the parties agreeing to delete the usual cl 35 in the JCT form on arbitration and substituting in its place an arbitration clause which contained neither a choice of the proper law of the contract, the law of the arbitration agreement or the seat of the arbitration.

In 1986 disputes between the parties arose concerning the entitlement of the plaintiffs to extension of time to complete the works, liquidated and ascertained damages, non-payment of certificates and defective works. The plaintiffs then requested the architects to settle the matters in dispute. The architects suggested that they had no power to decide on the disputes and that the matters be raised before an arbitrator. The plaintiffs then sought the concurrence of the defendants in the appointment of an arbitrator but the defendants denied the plaintiffs' right to arbitration. Notwithstanding, the plaintiffs proceeded to arbitration in accordance with the arbitration agreement. The arbitrator published an award in which he awarded and directed the defendants to pay the plaintiffs damages for wrongful repudiation, costs, interest and arbitrators' fees and costs. The plaintiffs brought the present action to enforce the arbitration award.

Held, allowing the application:

(1) The arbitrator had complied with all procedural requirements under Singapore law in holding the arbitration and the defendants had been notified of every step taken or direction given by the arbitrator.

(2) The defendants had reserved the right not to submit to the jurisdiction of the court; but this reservation was made on 16 October 1989, well after they had entered unconditional appearance on 11 March 1989. Since the defendants could have entered conditional appearance with a view to setting aside the service of the originating summons on the ground of lack of jurisdiction, but failed to do so, the purported reservation had no effect. Accordingly, the defendants had submitted to the jurisdiction of the court.

(3) There was a preponderance of relevant factors showing that either the parties had contemplated Singapore law as the proper law or that it was the proper law by necessary implication from a consideration of the terms of the building agreement.

(4) Consequently the law of the arbitration agreement (as a general rule) and the curial law (in the absence of an express choice of the proper law of individual reference) would be Singapore law as well.

(5) As the proper law of the contract was Singapore law, and it would be more practical, convenient and sensible to

hold the arbitration in Singapore without having to prove Singapore law, the seat of arbitration was Singapore. The architect, to whom disputes and differences had first been referred, was resident in Singapore and accordingly any arbitration consequent upon the architect's decision or non-decision would take place in Singapore. The curial law was thus Singapore law and the arbitrator had fully complied with its requirements in holding the arbitration.

(6) There were many disputes which were referable to the architect, and absent his decision, referable to arbitration. Furthermore, whether or not the defendants were entitled to terminate the employment of the plaintiffs was itself an arbitrable issue.

Cases referred to

1 *Somportex Ltd* v *Philadelphia Chewing Gum Co* [1968] 3 All ER 26 (folld)
2 *Amin Rasheed Shipping Corp* v *Kuwait Insurance Co* [1983] 3 WLR 241; [1983] 2 All ER 884 (refd)
3 *Heyman* v *Darwins* [1942] AC 356 (refd)

Anthony Colman QC (*Benedict Chan* with him) for the plaintiffs.

Defendants not appearing.

Cur Adv Vult

Chan Sek Keong J: This is an action commenced by the plaintiffs on 2 November 1988 for leave to enforce, as a judgment or order of this court to the same effect, an arbitration award dated November 1988 ('the award') of Mr TJ Cleary, the arbitrator, made in an arbitration between the plaintiffs and the defendants. The defendants were not represented by counsel or otherwise at the hearing of the application on 4 March 1991. After reading the affidavits filed herein and hearing counsel for the plaintiffs, I made an order in the terms sought by counsel. Subsequently, and before the order of court was extracted, junior counsel sought a variation of the order in terms of prayer 1 of this action and costs to be taxed. I granted the said application. I now give my reasons.

The plaintiffs are a Singapore construction company and the defendants are Sri Lankan company and a subsidiary of the Bank of Ceylon Ltd. The defendants have never had a place of business in Singapore.

In early 1982, consultants on behalf of the defendants invited various building contractors to submit tenders for the construction of a building in Colombo, Sri Lanka, which would be used as the head office of the Bank of Ceylon. On or about 10 July 1982, the defendants as employers accepted the plaintiffs' tender in the sum of Sri Lanka RS 608,680,000. Negotiations then took place with respect to the terms and conditions of the agreement. The form of the contract that was eventually adopted by both parties was the standard JCT form, with some modifications, of which the most important for the purpose of this application was the arbitration cl 35.

The arbitration clause

The parties could not agree on cl 35 as printed in the JCT form. The defendants suggested that cl 35(1) to (4) be retained save that para 5 should be as follows:

> The Law of Sri Lanka shall be the proper law of this contract and shall apply to any arbitration under this contract wherever the same, or any part of it shall be *contracted.* (sic)

However, on 1 September 1982, the defendants, through their consultants who were resident in Singapore, informed the plaintiffs that the whole of the printed cl 35 including the proposed para 5 would be deleted, and that the following arbitration clause would be substituted:

> Provided always that in case any dispute or difference shall arise between the employer or the architect on his behalf and the contractor, either during the progress or after the completion or abandonment of the works, as to the construction of this contract as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this contract to the discretion of the architect or the withholding by the architect of any certificate to which the contractor may claim to be entitled or the measurement and valuation mentioned in cl 30(5)(A) of these conditions or the rights and liabilities of the parties under cll 25, 26 or 33 of these conditions), then such dispute or difference shall, in the first place, be referred to and settled by the architect who shall, within a period of 30 days after being requested by either party to do so, give written notice of his decision to the employer and the contractor. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the employer and the contractor and shall forthwith be given effect to by the employer and by the contractor, who shall proceed with the execution of the works with all due diligence whether he or the employer requires arbitration, as hereinafter provided, or not. If the architect has given written notice of his decision to the employer and the contractor and no claim to arbitration has been communicated to him by either the employer or the contractor within a period of 30 days from receipt of such notice, the said decision shall remain final and binding upon the employer and the contractor. If the architect shall fail to give notice of his decision, as aforesaid, within a period of 30 days after being requested as aforesaid, or if either the employer or the contractor be dissatisfied with any such decision, then and in any such case either the employer or the contractor may within 30 days after receiving notice of such decision, or within 30 days after the expiration of the first named period of 30 days, as the case may be, require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision, if any, of the architect has not become final and binding as aforesaid shall be referred to the arbitration of a person to be agreed between the parties, or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, to the arbitration and final decision of two persons, one to be appointed by each party. The arbitrators should also be empowered to appoint an umpire.

The final form of the contract which was signed by both parties in Singapore on 10 September 1982 included

the above arbitration clause which, it should be noted, contained neither a choice of the proper law of the contract, the law of the arbitration agreement or the seat of the arbitration. These omissions provided the reason for the absence of the defendants at the hearing before me.

In compliance with the terms of the building agreement, the plaintiffs had on 7 September 1982 procured a Singapore insurance company, namely, Singapore Aviation and General Insurance Co Ltd ('SAGI') to issue in favour of the defendants a performance bond in the sum of Sri Lanka RS 30,434,000. The plaintiffs claimed that the bond was subsequently reduced to Sri Lanka RS 15,217,000, but the defendants denied that this was done with their consent or authority.

In 1986, disputes between the parties arose in connection with the project. They concerned the entitlement of the plaintiffs to extension of time to complete the works, liquidated and ascertained damages, non-payment of certificates and defective works. On 8 January 1987, the defendants called on the performance bond for payment of RS 30,434,000 on the ground of the plaintiffs' defaults under the building agreement. SAGI did not pay. On 7 March 1988, the defendants issued a certificate of default which under the terms of the performance bond made the default final and conclusive. SAGI still did not pay.

Arbitration in Singapore

On 17 February 1987, the plaintiffs gave notice to the architects of the project, who were resident in Singapore, requiring them to settle, in accordance with the terms of the arbitration clause, the matters in dispute, numbering 20 heads, raised in the said notice. On 11 March 1987, the architects replied that they had no power to decide on the said disputes as the defendants had determined the building agreement on 3 February 1987 under cl 25 thereof. They suggested that the matters be raised before an arbitrator.

In response to this letter, the plaintiffs notified the defendants that the architects had refused to comply with the terms of cl 35, in view of which they required the defendants to concur in the appointment of a sole arbitrator, whom they named. The defendants, in their reply dated 15 April 1987, denied the plaintiffs' right to arbitration, alleging that the plaintiffs' employment had been terminated and the reference to arbitration was not bona fide. By their letter of 28 April 1987, the plaintiffs rejected the defendants' stand and nominated Mr TJ Cleary, FRICS, MA Cost E, MSISV, as their arbitrator. The defendants were required to nominate their arbitrator within 14 days.

In their reply of 7 May 1987, the defendants reiterated their stand and asserted that the appointment of Mr TJ Cleary was invalid and that he had no authority or jurisdiction to make any award binding on them. On 1 June 1987, the solicitors for the plaintiffs gave another 21 days' notice to the defendants to appoint an arbitrator, failing which the plaintiffs would proceed pursuant to s 9(1)(b) of the Arbitration Act (Cap 10, 1985 Ed).

On 9 July 1987, the plaintiffs formally appointed Mr Cleary as the arbitrator and sought a preliminary meeting. Thereafter the arbitrator proceeded in accordance with the terms of the arbitration agreement. I do not propose to detail the procedures adopted by him which culminated in the holding of the arbitration proper. On the evidence, I was satisfied that he had complied with all procedural requirements under Singapore law in holding the arbitration and that the defendants had been notified of every step taken or direction given by him for the filing of points of claim, points of defence, etc.

The plaintiffs complied with all the directions of the arbitrator. The defendants ignored them. On 27 April 1988, the arbitrator proceeded with the arbitration in the absence of the defendants. Hearing took place until 29 April 1988 when the plaintiffs were given leave to amend their points of claim. On 4 May 1988, the arbitrator notified the defendants of the amended points of claim and that the adjourned hearing would resume on 7 May 1988. It resumed as scheduled and continued until 10 May 1988 when he made an interim award in the form of a declaration that the defendants were not entitled to make any demand against the plaintiffs or SAGI under the performance guarantee.

On 16 November 1988, the arbitrator published the award in which he awarded and directed the defendants to pay to the plaintiffs forthwith the sum of RS127,154,916.16 (being RS114, 179,158.63 for damages for wrongful repudiation and RS12,975,757.53 for interest), costs to be agreed or taxed if not agreed, and the arbitrator's fees and costs amounting to S$52,642.25.

Suit No 3134 of 1987

After the plaintiffs had appointed Mr TJ Cleary as the arbitrator, the defendants on 26 October 1987 appointed solicitors in Singapore who made a demand against SAGI for payment of RS30,434,000, whereupon the plaintiffs, on 4 December 1987, commenced an action in Suit No 3134 of 1987 against SAGI to restrain SAGI from releasing any money to the defendants pending the award to be made by the arbitrator in a pending arbitration. An interim injunction was granted by the court on 8 December 1987. On 18 April 1988, the defendants applied to be joined as a party to this action. On 24 November 1988 the application was adjourned sine die with liberty to restore. It has yet to be restored for hearing.

Suit No 518 of 1988

On 15 March 1988, the defendants commenced an action in Suit No 518 of 1988 against SAGI for payment of RS 30,434,000 under the performance bond. They then applied for summary judgment whereupon SAGI put in a defence by affidavit and also took out a third party notice to join the plaintiffs as indemnitors. The plaintiffs also applied to be joined as a party to the action. This action was discontinued by the defendants on 15 March 1990, with costs to be paid by the defendants.

Originating Summons No 786 of 1988

On 15 August 1988, the plaintiffs commenced an action in OS No 786 of 1988 to enforce the interim award of the arbitrator. On 16 August 1988, the plaintiffs obtained an ex parte interim injunction restraining the defendants from making any demand against the plaintiffs or SAGI under the performance bond. This injunction is still in force.

Originating Motion No 197 of 1988

On 23 December 1988, the defendants commenced another action, this time against the plaintiffs in OM No 197 of 1988 for a declaration that the interim award and the award were made without jurisdiction and were not binding on the defendants, or alternatively, that the said awards be set aside. The plaintiffs entered appearance on 20 January 1989 and on 5 September 1989 applied for security for costs to be provided. On 15 March 1990, the defendants applied for leave of the court to discontinue this proceeding. Leave was granted on 6 April 1990, with costs to be paid by the defendants.

Originating Summons No 1145 of 1988

As I have recited, this action was commenced on 21 November 1988 for leave to enforce the award as a judgment or order to the same effect. The originating summons was duly served out of the jurisdiction on the defendants in Colombo on 8 February 1989 and they entered an appearance on 11 March 1989. On 22 September 1989, the plaintiffs filed a notice of appointment to hear the summons. It came on for a preliminary hearing on 16 October 1989 when the solicitors reserved their clients' right not to submit to the jurisdiction of the court. The hearing of the action was then adjourned to a date to be fixed. On 30 July 1990, the defendants' solicitors applied to court to withdraw from the proceeding on the ground that the defendants wished to discharge them from further acting. On 2 August 1990, the registrar fixed the hearing dates, ie 4-5 March 1991, for this action. On 20 August 1990, the defendants' solicitors were given leave to discharge themselves from further acting in the matter.

The legal issues

Jurisdiction of the court: As this was an action to enforce the award against a foreign party who had no place of business in Singapore, counsel had to satisfy me that this court had jurisdiction to hear the action even though the defendants were not present or represented. The defendants had earlier purported to reserve the right not to submit to the jurisdiction of this court. But this reservation was made on 16 October 1989, well after they had entered unconditional appearance on 11 March 1989. They could have entered a conditional appearance with a view of setting aside the service of the originating summons outside of the jurisdiction on the ground of lack of jurisdiction or that it was not a proper case for service outside the jurisdiction. They did not do so. In my view, the purported reservation had no effect: see *Somportex* v *Philadelphia Chewing Gum Co.*[1] I should also add that the entering of unconditional appearance was probably deliberate as the defendants had in Suit No 3134 of 1987 and Suit No 518 of 1988 sought the aid of this court in relation to the enforcement of the performance guarantee given under the terms of the building agreement on the basis that it was a demand guarantee subject to Singapore law. Accordingly, I was satisfied that the defendants had submitted to the jurisdiction of this court.

The proper law: The next issues were whether Singapore law or Sri Lankan law or some other law was (1) the proper law of the contract; (2) the proper law of the arbitration agreement; (3) the curial law; and (4) the proper law of the reference. Counsel for the plaintiffs referred to me to the analysis and conclusions set out in Mustill and Boyd *The Law and Practice of Commercial Arbitration in England* (2nd Ed), at pp 60-65 on these issues and submitted that the proper law on all four issues was Singapore law.

(1) Of the building agreement: As to issue (1), counsel submitted the proper law was by implication Singapore law as it had the closest connection with the building agreement. He submitted that this was so on the basis of the following factors: (i) the contract was signed in Singapore; (ii) the place of residence of the plaintiffs and three out of the four consultants to the project, viz (a) the planners, architects and designers, (b) the mechanical and electrical engineers and (c) the quantity surveyors and construction costs management consultants, was Singapore, the fourth consultant, the structural engineers, being in Kuala Lumpur, West Malaysia; (iii) payments for work done would be paid to the plaintiffs in Singapore; (iv) the JCT form of the contract was in all important respects the same as the standard form of building contract used in Singapore (commonly known as the SIA Form, 1963 Ed).

I accepted this submission. There was a preponderance of the relevant factors showing that either the parties had contemplated Singapore law as the proper law or that it was the proper law by necessary implication from a consideration of the terms of the building agreement. I was aware that there were other factors which would, in an ordinary case, be regarded as pointing to the law of Sri Lanka as the proper law, eg the project was in Sri Lanka, the use of Sri Lanka currency as the money of account: see Lord Wilberforce in *Amin Rasheed Shipping Corp* v *Kuwait Insurance Co*[2] at p 255. However, the documentary evidence showed that after negotiations the parties had expressly decided not to apply the law of Sri Lanka as the proper law of the contract as well as of the arbitration agreement. In view of this, it would be impossible for the court to hold that the law of Sri Lanka could be, by necessary implication, the proper law. On the other hand, it would be entirely consistent with the intention of the parties to imply to hold, which I did, that the parties had agreed to whatever system of law the court would find as the proper law. If this approach were wrong, then I was of the view that by necessary implication from the terms of the building agreement, the proper law was Singapore law.

The only other law relevant to the matter might be the law of England, but the deliberate deletion of cl 35 as printed also made its application unrealistic, bearing in mind that English law was the same as Singapore law in this respect. The law of Malaysia had a degree of relevance by reason of the residence of the structural engineers, but the connection was, in my view, too remote, also bearing in mind that Malaysian law was also the same as Singapore law. In *Kuwait Insurance Co*,[2] Lord Diplock said (at p 249): '... contracts are incapable of existing in a legal vacuum.' That left Singapore law as the logical choice, and here logic was supported by the fact of the close and real connection of Singapore law to the building agreement. The last factor in favour of Singapore law being contemplated as the proper law was the reliance by the defendants on Singapore law in trying to obtain summary judgment against SAGI on the performance guarantee on the basis that under Singapore law there was no defence to the claim. Having regard to these factors, I was satisfied that the proper law of the contract was Singapore law.

(2) Of the arbitration agreement: As to issue (2), counsel referred to the following statement in *Mustill and Boyd* at p 63:

> As a general rule the arbitration agreement will be governed by the same law [the proper law of the contract], since it is part of the substance of the underlying contract (citing *Hamlyn & Co* v *Talisker Distillery* [1894] AC 202).

I accepted this submission as there was no other factor to point to any other system of law. Of course, the other factor in favour of this submission was the express agreement not to apply Sri Lankan law as the law of the arbitration agreement.

(3) Of the curial law: With respect to issue (3), counsel again referred to the following statement from *Mustill and Boyd* at p 63:

> In the absence of an express choice of the proper law of the individual reference, we submit that the ordinary inference would be that the parties intended individual references to be governed by the same law that governed the agreement to arbitrate under which the reference is to take place.

I accepted this submission as, in the absence of an express choice of law, such an inference was entirely realistic.

(4) Of the reference: With respect to issue (4), counsel once more referred to the following passage from *Mustill and Boyd* at p 64:

> In the absence of express agreement, there is a strong prima facie presumption that the parties intend the curial law to be the law of the 'seat' [the forum or *locus arbitri*] of arbitration, ie the place at which the arbitration is to be conducted, on the ground that that is the country most closely connected with the proceedings. So in order to determine the curial law in the absence of any express choice by the parties it is first necessary to determine the seat of the arbitration, by construing the agreement to arbitrate.

The arbitration was silent on the 'seat' of arbitration. In the circumstances, it could only have been one of three places, Sri Lanka, Singapore and Malaysia. Counsel for the plaintiffs submitted that if the proper law of the contract were Singapore law, then the 'seat' should be in Singapore. I agreed with this submission. It would be more practical and convenient, and therefore sensible to hold the arbitration in Singapore without having to prove Singapore law. I would add further that on a realistic approach to the construction of cl 5, the answer would be the same. Any arbitration under cl 5 could only arise after the disputes and differences had first been referred to the architect for his decision. The architect was resident in Singapore, and accordingly in the absence of any contrary factor, the place of reference should be Singapore. It would then follow that any arbitration consequent upon the architect's decision or non-decision, would take place in the same venue, having regard to the presence and easy availability in Singapore of three of the four consultants, whilst the fourth consultant was, in terms of flying time, only a couple of hours away from Singapore.

That being the position, I was of the view that the curial law was Singapore law and that the arbitrator had fully complied with its requirements in holding the arbitration.

Was there a dispute?

The final issue before me was whether there was any dispute or difference between the parties that was referable first to the architect for decision, and absent his decision, referable to arbitration. The defendants in one of their letters to the plaintiffs denied that there was any dispute and that further as they had terminated the plaintiffs' employment, there was nothing which could be referred to the architect or to arbitration. Counsel for the plaintiffs submitted that this objection was untenable on the facts and the law. I agreed. There were a great number of disputes of fact between the parties arising out of and in connection with the project. They were set out in great detail in the plaintiffs' letter dated 17 February 1987. Furthermore, whether or not the defendants were entitled to terminate the employment of the plaintiffs was itself an arbitrable issue: *Heyman* v *Darwins*.[3] The architect decided not to decide any of the disputes raised by the plaintiffs and suggested that they be referred to arbitration.

For the above reasons, I was satisfied that this court had jurisdiction to hear the action, that the award was valid and the plaintiffs were entitled to enforce the award against the defendants as a judgment or order to the same effect pursuant to s 20 of the Arbitration Act (Cap 10, 1985 Ed).

Application allowed.

Solicitors: *Goh Poh & Partners.*

Reported by *Liu Hern Kuan*

Tan Chor Thing v Tokyo Investment Pte Ltd & Anor

HIGH COURT (SINGAPORE) — SUIT NO 1844 OF 1989
CHAN SEK KEONG J
20 FEBRUARY 1991

Contract — Illegal contract — Contract prohibited by statute — Effect of such contracts — General principle — Effect of securities based on the illegal contract

Commodities and Futures Trading — Futures trading — Futures Trading Act (Cap 116, 1985 Ed) — Construction of Act — Effect of Act — Acts prohibited under the Act

The plaintiff was the owner of some 290,000 shares in various companies listed on the Singapore Stock Exchange. The defendant ('Tokyo Investment') was the representative of the second defendant, Tokyo Commodity Ltd ('Tokyo Commodity'). The plaintiff had originally pledged the shares with Heritage Commodities as security for his trading account with them. However, he had closed his trading account with Heritage. The shares then came into the custody of Tokyo Investment. Tokyo Commodity claimed that the plaintiff had allowed his brother TCK to deliver the shares to Tokyo Investment to hold on behalf of Tokyo Commodity as security for TCK's trading account with them.

These shares were eventually seized by CID in connection with investigations into the activities of Tokyo Investment for infringement of the Futures Trading Act (Cap 116, 1985 Ed) ('the Act'). On application by the plaintiff, the assistant registrar has ruled that the plaintiff was entitled to possession of the shares. The defendants appealed against this decision.

The plaintiff claimed the return of the shares on the basis that the pledge was illegal as the underlying transactions were illegal under the Act. The defendants claimed that the transactions were legal as they were effected in Hong Kong. Tokyo Investment took orders from TCK and placed them with Tokyo Commodity in Hong Kong as TCK's agents. Further, Tokyo Commodity were not aware that it was illegal for Tokyo Investment to carry on the business of futures trading in Singapore without a licence.

Held, dismissing the appeal:

(1) Tokyo Investment had acted as the agents of Tokyo Commodity and had carried on, illegally, the business of futures brokers in Singapore.

(2) With respect to the issue of the legality of the transactions, the general principle of law is to determine whether the statute means to prohibit the contract. This is a question of construction of the statute.

(3) The Act was clearly intended to regulate the carrying on of futures trading business in Singapore and to protect the public from dealing with unlicensed brokers in respect of futures in any unauthorized futures exchange within or outside Singapore. It clearly prohibits an unlicensed broker from entering into a brokerage contract for futures.

(4) Tokyo Commodity were carrying on the business of a futures broker in Singapore without a licence through Tokyo Investment. Accordingly, the contracts which they had put through for TCK in Singapore were all illegal and all moneys due thereunder were irrecoverable.